IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs April 28, 2009

JEANNEA LYNN JONES v. KENNETH DALE JONES

Appeal from the Chancery Court for Lawrence County
No. 11631-03 Stella L. Hargrove, Judge

No. M2007-01534-COA-R3-CV - Filed November 19, 2009

The trial court granted a divorce to the parents of two daughters. A marital dissolution agreement incorporated into their final decree of divorce provided that each parent would pay one-half of the expenses incurred by their daughters for college tuition and books. After the father refused to pay the tuition expenses of the parties' younger daughter, the mother filed suit to compel him to pay. The father argued that he should not be required to pay for his daughter's tuition, because the mother's job with the university entitled the daughter to a 100% tuition credit. The trial court found that the father was obligated to pay and entered a judgment against him. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

PATRICIA J. COTTRELL, P.J.,M.S., delivered the opinion of the court, in which FRANK G. CLEMENT, JR. and ANDY D. BENNETT, JJ., joined.

M. Wallace Coleman, Jr., Lawrenceburg, Tennessee, for the appellant, Kenneth Dale Jones.

Ben Boston, Lawrenceburg, Tennessee, for the appellee, Jeannea Lynn Jones.

OPINION

I. A MARITAL DISSOLUTION AGREEMENT

Kenneth Dale Jones ("Father) and Jeanna Lynn Jones ("Mother) are the parents of two daughters. Mother filed a Complaint for Divorce in the Chancery Court of Lawrence County. The trial court granted the parties a divorce on November 14, 2003. A Marital Dissolution Agreement (MDA) signed by both parties was incorporated by reference into the final divorce decree. The parties' older daughter, Jennifer, had reached her majority by the time of the divorce. The younger daughter, Jerrica, was still a minor.

A Permanent Parenting Plan was adopted and approved by the trial court and was made a part of the MDA. For the purposes of this case, the most relevant provision of the Parenting Plan reads as follows: "The parties agree to equally divide the expense for college tuition and books for the parties' daughters, Jennifer Page Jones and Jerrica L. Jones." The plan also required Father to maintain medical insurance on the two children and declared that the parties would equally divide any medical expenses not covered by insurance.

During the parties' marriage, Mother worked at the Murray Corporation manufacturing plant in Lawrenceburg, Tennessee. In the summer of 2002, prior to the divorce, Mother moved to Oklahoma with the two daughters so that Jennifer could attend college at Oral Roberts University (ORU). Jennifer entered ORU as a full-time student in the Fall of 2002. Mother became an employee of ORU in December of 2002. Mother testified that she moved to Oklahoma and took the job at ORU for the sole purpose of putting her daughters through college. Mother and daughters lived together in fairly close quarters to save on room and board. Father paid all the sums requested by Mother for Jennifer's college tuition and books.

Mother testified that she earned $10,000 less per year at ORU than she had earned at Murray. One of the benefits of employment at ORU is a tuition discount, available to dependents of University employees on a graduated scale, depending on length of employment. Mother testified that she would not have been able to afford her share of the tuition if not for the discount. After two full years of full-time employment, the discount is 100%. In May of 2003, Mother declined an interview for a job that would have paid her $6,000 more per year because she wanted to continue to receive the tuition benefit.

Jerrica entered ORU in the Fall of 2005. Mother notified Father of the amount due for Jerrica's first semester, and Father sent a payment of $2,244 directly to ORU. The University sent Jerrica a refund of $2,069, an amount equal to Father's payment, less some miscellaneous fees. When Father learned that his daughter was entitled to a 100% tuition discount because of Mother's employment, he refused to make any further tuition payments for her.

On April 17, 2007, Mother filed a petition for Contempt and/or Breach of Contract in the Chancery Court of Lawrence County. She asked the court to award her $10,872.07, representing one half of Jerrica's tuition and book expenses to date, minus Father's first semester payment, as well as $876.95 for a medical bill that Jerrica incurred after Father allowed her medical insurance to lapse. The case was heard on May 29, 2007.

After examining the proof and hearing the testimony of the parties, the trial court found that Mother had given up a higher-paying job in order to take the job at ORU and to receive the tuition discount. Relying in large part on "the clear precedence" from this court's opinion in *Bowling v. Bowling,* No. E2004-02119-COA-R3-CV, 2005 WL 336913 (Tenn. Ct. App. Feb. 14, 2005) (no Tenn. R. App. P. 11 application filed), the court held that Father had breached his contract with Mother and was obligated to pay the requested tuition funds. The court also ordered Father to pay

one-half of Jerrica's medical bill, or $438.48, and Mother's attorney fees in the amount of $2,002.50. This appeal followed.

II. A CONTRACTUAL OBLIGATION

Under most circumstances, a parent's legal duty to support a child ends when the child reaches the age of eighteen, or if the child has reached that age and is still in high school, when the child graduates from high school. *See* Tenn. Code Ann. § 34-1-102. Our courts have recognized, however, that even though there is no legal requirement that parents pay for a child's college expenses, such payment is an appropriate subject for an agreement between a husband and wife going through a divorce. *Penland v. Penland,* 521 S.W.2d 222, 224 (Tenn. 1975); *Pylant v. Spivey,* 174 S.W.2d 143, 151 (Tenn. Ct. App. 2003).

An agreement to provide college expenses to a child that is executed as part of a divorce settlement should be treated as a contractual obligation, and it is enforceable in the same manner as other contracts, even if it is incorporated into a final decree of divorce. *Blackburn v. Blackburn*, 526 S.W.2d 463, 465 (Tenn. 1975); *Penland v. Penland,* 521 S.W.2d at 225. *See also, Bryan v. Leach*, 85 S.W.3d 136, 151 (Tenn. Ct. App. 2001).

The cardinal rule for the interpretation of contracts is to ascertain the intention of the parties and to give affect to that intention, consistent with legal principles. *City of Cookeville v. Humphrey*, 126 S.W.3d 897 (Tenn. 2004); *Bob Pearsall Motors, Inc. v . Regal Chrysler-Plymouth, Inc.*, 521 S.W.2d 578, 580 (Tenn. 1975); *Wills & Wills, L.P. v. Gill,* 54 S.W.2d 283 (Tenn. Ct. App. 2001).

A contract will be construed as written, according to its plain terms, *Richland County Club, Inc. v. CRC Equities, Inc.*, 832 S.W.2d 554, 557 (Tenn. Ct. App. 2004), or according to "the usual, natural, and ordinary meaning of the contractual language." *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88, 95 (Tenn. 1999). If the contract's language is clear and unambiguous, its literal meaning controls the enforcement of the contract. *City of Cookeville v. Humphrey*, 126 S.W.3d at 903; *Planters Gin Co. v. Fed. Compress & Warehouse Co.*, 78 S.W.3d 885, 890 (Tenn. 2002). "A contract is ambiguous if it is of uncertain meaning and may fairly be understood in more ways than one. A strained construction may not be placed on the language used to find ambiguity where none exists." *Empress Health & Beauty Spa, Inc. v. Turner*, 503 S.W.2d 188, 190-191 (Tenn. 1973); *Rogers v. First Tennessee Bank Nat'l Ass'n.,* 738 S.W.2d 635, 637 (Tenn. Ct. App. 1987). If the contract is ambiguous, the intention of the parties must be gathered from the instrument as a whole and from the situation of the parties. *Richland County Club, Inc. v. CRC Equities, Inc.*, 832 S.W.2d at 557.

In the present case, no question has been raised as to the reasonableness of Jerrica's college choice or the amount of tuition the trial court ordered Father to pay.[1] Father acknowledges that he

[1] In cases involving the enforcement of agreements to pay college expenses which are incorporated into marital dissolution agreements, the question of reasonableness often becomes critical, ". . . at least where no specific college or (continued...)

can afford to pay one-half of Jerrica's tuition, but he insists that he should not be compelled to do so, because he only agreed to pay one half of "the expense for college tuition and books," and he argues that there was no expense for tuition because of the discount that Mother obtained.[2]

Father wants us to limit the meaning of the term "expense" in the MDA to money spent out of pocket, thereby negating Mother's contribution to the cost of Jerrica's tuition. Dictionary inquiry shows that the word "expense" actually encompasses a range of closely-related meanings. The first of four separate definitions of "expense" (and therefore the "central meaning" of the word) in the American Heritage Dictionary of the English Language is "[t]he cost involved in some activity; a sacrifice; a price." The general definition in Black's Law Dictionary (5th Ed. 1979) reads, "that which is expended, laid out or consumed. An outlay; charge; cost; price. The expenditure of money, time, labor, resources, and thought."[3]

The proof shows that the credit applied to Jerrica's tuition was part of Mother's compensation package as an employee of ORU. Each semester, the university sent Mother an invoice showing the amount of Jerrica's tuition and other fees it charged for that semester. The tuition credit was then subtracted from the total, leaving the account balance at the bottom of the invoice. The tuition cost did not disappear from the University's calculation, but was offset by the discount Mother's employment entitled her to.

Mother moved to another state and took a job that paid $10,000 less per year than her job in Lawrenceburg in order to put her daughters through college. She also chose not to pursue a job that could have increased her income by $6,000 per year, in order to preserve the tuition benefit. Father does not deny that Mother obtained the benefit at a substantial financial cost to herself.

Based upon the facts of this case and the definitions cited above, we believe that, contrary to Father's argument, there was a tuition expense, which Mother paid through the application of one aspect of her total compensation package. Further, in light of the circumstances of the divorce, it was the intent of the parties to share equally the economic burdens arising from the college education of their daughters. It would, therefore, contravene that intent to require Mother to carry the entire burden by herself. She made economic sacrifices in other areas so she could contribute to her daughters' college educations. To require Father to pay half of the expenses would be consistent with the parties' agreement and would further the intent and purpose of that agreement.

---

[1](...continued)
amount of expenses is set forth." *Pylant v. Spivey,* 174 S.W.2d at 153. *See also*, *Hathaway v. Hathaway*, 98 S.W.3d 675, 680 (Tenn. Ct. App. 2002); *Vick v. Vick*, No. 02A01-9802-CH-00051, 1999 WL 398115 (Tenn. Ct. App. June 16, 1999) (no Tenn. R. App. P. 11 application filed); *Hennigan v. Hennigan*, No. 01A01-9807-CH-00380, 1999 WL 330173 (Tenn. Ct. App. May 26, 1999) (no Tenn. R. App. P. 11 application filed). No such issue is presented in this appeal.

[2]Father does not deny that he is responsible for one-half the cost of the books required for Jerrica's university courses.

[3]The term "out of pocket expense" is listed separately below the general definition of expense.

The trial court cited the unpublished case of *Bowling v. Bowling*, No. E2004-02119-COA-R3-CV, 2005 WL 336913 (Tenn. Ct. App. Feb. 14, 2005) (no Tenn. R. App. P. 11 application filed) as the basis for its decision. In that case, as in the present one, the parties' MDA provided that each parent would be responsible for and would pay one-half of the costs of their children's college education. The mother received a tuition credit from her employer, which paid $912 towards those expenses. The father argued, among other things, that he should be given the benefit of the tuition credit. This court held that:

> The Contract unambiguously states that the father is to pay one-half of his daughter's college expenses, and does not mention employment benefits. There is no basis for the Court to take these benefits into account in computing the father's obligation. The fact that the wife receives such a benefit and may have voluntarily allowed the father to share the same in the past, does not affect the father's contractual obligation.

2005 WL 336913, at *3.

Father argues that the *Bowling* case can be distinguished from the present one.[4] However, we find those distinctions do not change the basic premise of the holding in *Bowling* or make that holding inapplicable to the case before us.

We therefore affirm the trial court's holding that pursuant to their MDA, Father is obligated to pay one-half of the tuition Jerrica owed prior to the application of Mother's employee discount.

III. ATTORNEYS FEES

One clause in the MDA provided that if either party breached the agreement, the court could award reasonable attorney fees and legal expenses incurred by the other party in enforcing the agreement. The trial court awarded Mother the attorney fees she incurred at trial to enforce the MDA. We affirm that award. Mother also seeks to recover her attorney fees and expenses on appeal. She is entitled to recover those fees and expenses under the MDA as well, and we award them to her.

---

[4] The first distinction made by Father is that, as we noted in *Bowling*, the employer benefit "was taxable income charged to the mother," whereas in the present case, Mother testified that she did not know whether or not the tuition benefit was taxable. The second distinction is that the mother in *Bowling* was still obligated to pay the amount of tuition that exceeded her employment benefit, and she paid the father's portion out of her pocket, so "she was seeking reimbursement for actual out-of-pocket payments," while in the present case, no such payment was required. There is no proof in the record of the present case as to the tax consequences of the tuition benefit. But even if Mother were to receive the benefit tax-free, Father does not even try to explain why that should make any difference. Whether the tuition discount is taxable or not does not alter the fact that Mother obtained it solely by her own efforts. Further, the *Bowling* court's treatment of the discount was not premised on its size or on the fact that the mother was required to pay the remainder of the tuition out of pocket after the discount. Rather, the court based its determination on the parties' intent, as expressed in their MDA, that the father was to pay one-half of his daughter's college expenses, and on the absence in the MDA of any mention of employment benefits. The same circumstances exist in the present case, and we see no reason why we should reach a different result.

IV.

We affirm the order of the trial court and remand this case to the Chancery Court of Lawrence County for a determination of the attorney fees on appeal and for any other proceedings necessary. The costs on appeal are taxed to the appellant, Kenneth Dale Jones.

_____

PATRICIA J. COTTRELL, P.J., M.S.